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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

Re: *IB Docket No. 02-364 – Review of the Spectrum Sharing Plan among Non-Geostationary Orbit Mobile Satellite Service Systems in the 1.6/2/4 GHz Bands*

Dear Ms. Dortch:

On March 7, 2008, Iridium filed an *ex parte* letter^{1/} arguing for the first time that the Commission should act in this proceeding to restrict the operating authority of Globalstar's satellite constellation as a means of implementing the Commission's *November 9th Order*, which revised the US band plan for Big LEO MSS services.^{2/} Globalstar responded by letter dated March 24, 2008^{3/}. The Commission subsequently announced that a proposed order in this proceeding was circulated among the Commissioners on April 18, 2009. It is highly unusual for the Commission, rather than a Bureau, to modify authorizations simply to implement decisions in rulemaking proceedings.^{4/} Globalstar is therefore concerned that the circulated item may purport to restrict Globalstar's authority to provide MSS services in other countries on frequencies permitted by the band plans in effect in those countries. Globalstar submits that such action by the Commission would be procedurally and substantively unlawful and inconsistent with the Commission's sound policy of encouraging US MSS licensees to provide global service.

1. The Commission has given no notice of any intention to restrict the operating authority of Globalstar's satellite constellation in this proceeding, and any decision on that issue would violate the Administrative Procedure Act ("APA") absent an opportunity for notice and comment on the Commission's proposed action.

^{1/} Letter from R. Michael Senkowski to Marlene H. Dortch dated March 7, 2008, in IB Docket No. 02-364.

^{2/} Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, *Second Order on Reconsideration and Second Report and Order*, 22 FCC Rcd 19733 (2007) ("*November 9th Order*").

^{3/} Letter from William T. Lake to Marlene H. Dortch dated March 24, 2008, in IB Docket No. 02-364 ("*Globalstar March 24, 2008 Letter*").

^{4/} See 47 C.F.R. § 0.261(a)(4). The only exceptions to the delegation of authority are those cases that present new or novel arguments, that would change Commission policy, or that cannot be resolved under outstanding precedents. *Id.* § 0.261(b)(1).

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The *Further Notice* identified a single issue in the stage of this proceeding that led to the Commission's *November 9th Order*. That issue was whether to revise the US band plan for Big LEO MSS providers to authorize Iridium to share an additional portion of the spectrum assigned to CDMA MSS carriers such as Globalstar.^{5/} As we have previously shown, the Commission's action in the *November 9th Order* to reassign a portion of Globalstar's spectrum to Iridium for Iridium's exclusive use was a violation of the APA's notice and comment requirement and – since such action was never discussed in any of the voluminous submissions in the record – lacked any record support.^{6/} Globalstar's appeal of that order is pending in the DC Circuit.^{7/}

The action now proposed would be an independent and equally plain violation of the APA's notice and comment requirement. The Commission has given no notice at any point in this proceeding that it might go beyond revising the US band plan for Big LEO MSS providers and attempt to restrict Globalstar's authority to operate its satellite constellation worldwide, with the effect of precluding Globalstar's provision of service in other countries on frequencies permitted by the band plans in effect in those countries. That issue was not discussed in the *Further Notice* or in any submission in the proceeding, until Iridium raised the issue in its *ex parte* letter on March 7, 2008. Iridium's letter cannot, of course, provide the notice that the FCC has never given. Therefore, it would be a clear violation of the APA's notice and comment requirement for the Commission to take the proposed action without giving Globalstar and others notice of what the Commission proposes to do and what authority it seeks to rely on, and an opportunity to comment. Such a modification of Globalstar's satellite authorization also would require compliance with section 316 of the Communications Act, 47 U.S.C. § 316.

2. Commissioners' staff have suggested to us that the circulated item might rely on *DISCO I*^{8/} as authority for the proposed action and have requested Globalstar's view on the applicability of that decision here. Without seeing the proposed order, we cannot know what support it purports to find in *DISCO I* – a decision not even mentioned in Iridium's March 7, 2008 *ex parte* letter. In any event, in our view that order provides no basis for giving extraterritorial effect to the Commission's revision of the US band plan for Big LEO MSS services in the *November 9th Order*.

^{5/} See Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, *Report and Order, Fourth Report and Order, and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13356 (2004) at ¶ 98 (“*Further Notice*”).

^{6/} Letter from William T. Lake to Marlene H. Dortch dated November 7, 2007, in IB Docket No. 02-364.

^{7/} *Globalstar, Inc. v. FCC*, D.C. Cir. Case No. 08-1046 (Petition for Review filed Feb. 5, 2008).

^{8/} Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, 11 FCC Rcd 2429 (1996) (“*DISCO I*”).

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As background, the Commission has long recognized that under the ITU regime each country has the authority to regulate the use of radiofrequencies within its borders.^{9/} The Commission has repeatedly acknowledged that, when it establishes a band plan for the provision of Big LEO MSS services in the United States, that plan does not “purport to have any extraterritorial application.”^{10/} To the contrary, each country has the right to determine its own band plan for the provision of such services within its borders. Iridium has acknowledged this fact by its own conduct: Iridium has advocated that regulators in other countries establish MSS band plans that harmonize with the band plan adopted in the United States.^{11/} It has not told those regulators that the US band plan has global effect.

The Commission has also long recognized the distinction between the scope of a carrier’s authorization to construct and launch a global MSS satellite system and the scope of its authorization to provide MSS services in the United States. Only the latter is confined by the band plan adopted for provision of services in the United States. For example, the Commission authorized Globalstar in 1995 to launch a global MSS system capable of operating in the entire 1610-1626.5 MHz band.^{12/} The Commission simultaneously authorized Globalstar to provide MSS services in the United States only within the 1610-1621.35 MHz band – the frequencies then reserved for use by CDMA carriers under the Big LEO band plan in the United States.^{13/} Iridium’s authorization similarly differentiates between the spectrum on which its satellite system may operate globally (to the extent permitted by other administrations) and the spectrum on which it may provide service in the United States.^{14/}

Thus, the Commission’s *November 9th Order* revising the US band plan for Big LEO MSS services has no effect on the frequencies on which Globalstar may provide MSS services in other countries. Each national administration retains the authority to establish the band plan for provision of MSS services within its borders – as Iridium has recognized most recently in urging

^{9/} *Globalstar March 24, 2008 Letter* at 1-3.

^{10/} Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band, *Memorandum Opinion and Order*, 11 FCC Rcd 12861 (1996) at ¶ 53, quoted in *Globalstar March 24, 2008 Letter* at 2.

^{11/} See, e.g., Iridium Press Release, *Globalstar, Iridium, Odyssey Global Mobile Satellite Phone System Operators Sign Spectrum Agreement* (Oct. 16, 1996) (attached as Exhibit 1); *Globalstar March 24, 2008 Letter* at 3-4.

^{12/} See Loral/Qualcomm Partnership, L.P. for Authority to Construct, Launch and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands, File Nos. 19-DSS-P-91(48), CSS-91-014 and 21-SAT-MISC-95, *Order and Authorization*, 10 FCC Rcd 2333 (1995) at ¶ 25, *Erratum*, 10 FCC Rcd 3926 (1995).

^{13/} *Id.* at ¶ 26; see *Globalstar March 24, 2008 Letter* at 4.

^{14/} See *Globalstar March 24, 2008 Letter* at 4-5.

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European administrations to revise their band plans to mirror the revised US band plan adopted in the *November 9th Order*.^{15/} The Commission might appropriately implement the *November 9th Order* (except that Globalstar's appeal makes any implementation premature) by revising Globalstar's authorization to reflect the change in the frequencies on which Globalstar may *provide service in the United States*. But any Commission attempt to dictate the frequencies on which Globalstar or other MSS operators may provide services in other countries would contravene the consistent FCC and international practice described above. And any Commission attempt to achieve the same result by narrowing the frequencies on which Globalstar's constellation has been authorized to operate since 1999 would be an unprecedented action wholly unrelated to the Commission's revision of the US band plan. We do not know what justification the Commission might assert for taking such unprecedented action, since -- as noted above -- the Commission has given no notice of the possibility of such action or of any asserted basis for it. What is clear is that such an action would not be simply an implementation of the Commission's revised US band plan for MSS services and could not be justified on that basis.

DISCO I does not change this analysis in any respect. That order has nothing to do with the implementation of band plans for satellite services and does not purport to work any revolution in the authority of each national administration to determine the use of radiofrequencies within its borders.

DISCO I was about expanding competition in satellite services. It abolished the FCC's prior distinction between US domestic fixed satellites ("domsats") and US "separate systems" and authorized all US-licensed FSS, MSS, and DBS systems to offer both domestic and international services. Far from asserting any new authority to limit the operations of US - licensed satellite systems, *DISCO I* eliminated restrictions imposed in previous orders. The order fully acknowledged the authority of other national administrations to determine whether US-licensed systems may offer services within their borders and under what conditions.^{16/} With respect to MSS services in particular, the Commission stressed that, "[b]efore an MSS licensee can actually provide service in a foreign territory, of course it must complete its international frequency coordination obligations and obtain any required approvals from the countries it wishes to serve." *Id.* ¶ 73.

In short, *DISCO I* contains no suggestion that the Commission meant to diminish the role of other national administrations in determining who may provide services within their borders or on what frequencies. Where a US-licensed operator seeks to provide service on a frequency that is within the operational authority of its satellites, it is up to the local administration to decide whether to allow it to do so. The US band plan for similar services is simply irrelevant.

^{15/} See *id.* at 3-4 & n.11 & Exh. 3.

^{16/} *DISCO I*, 11 FCC Rcd 2429 at ¶¶ 19, 68, 70, 73 & n.14.

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3. Any order purporting to restrict Globalstar's ability to provide MSS services in other jurisdictions on frequencies that are within the MSS band plans of the respective administrations would contravene the Commission's sound and longstanding policy to encourage global provision of MSS services by US-licensed operators. The Commission has recognized that Big LEO systems, by virtue of their non-geostationary satellite orbits, are inherently capable of providing global service. It accordingly has established the sound goal of fostering US-licensed Big LEO MSS service around the world.^{17/} Indeed, it has *required* Big LEO systems to be designed to provide global coverage, noting the significant benefits in "furthering the creation of the global information infrastructure."^{18/}

This sound policy would be subverted by any attempt to restrict Globalstar's ability to provide MSS services in other countries on frequencies that comport with the MSS band plans in those countries. Such a restriction would seriously hinder and potentially eliminate Globalstar's ability to provide MSS services in many countries and regions. As we have shown, Globalstar and its independent service providers today rely on channels 8 and 9, which the US band plan now assigns to Iridium, to provide MSS service via the three gateways in Russia, two gateways in Brazil, and a gateway in each of France, Turkey, and Australia. In some instances other channels may be unavailable to the service providers, either because their regulatory authorities do not permit the service providers to use them or because they are being used in adjacent gateways. In Russia, for example, Globalstar's lower channels are made unavailable for MSS use in order to prevent interference to GLONASS. Globalstar and its service providers have substantial and growing customer bases in these and neighboring countries, including public safety and relief organizations who rely on Globalstar's services to meet communications needs not met by other providers. Any attempt by the Commission to make channels 8 and 9 unavailable for Globalstar's use in those countries would be not only unlawful but wholly at odds with the Commission's policy to encourage global service provision by US MSS carriers.

Finally, restricting Globalstar's ability to provide service globally would harm Globalstar's customers and thwart FCC policy with no countervailing benefit to Iridium. Like any other carrier, Iridium may provide service only where a national administration authorizes it to do so. Where a national administration has prescribed the respective frequencies on which Iridium and Globalstar may provide service within its borders, any FCC attempt to disable Globalstar from providing service would not expand the scope of Iridium's service authority. Similarly, if an administration permits Iridium to provide service, its action will be effective without any need for the Commission to attempt to limit Globalstar's ability to serve customers in that jurisdiction.

^{17/} See, e.g., *Big LEO Report and Order*, 9 FCC Rcd 5936 (1994) at ¶ 216; *Globalstar March 24, 2008 Letter* at 5 & n.16.

^{18/} *Big LEO Report and Order*, 9 FCC Rcd 5936 at ¶¶ 21-23.

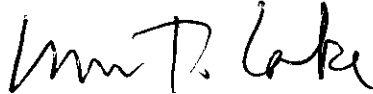
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Globalstar is at a disadvantage in attempting to respond to a proposed order that it has not seen, which may address an issue that is not within the scope of this proceeding, based on an authority never mentioned by any party to the proceeding. The APA exists to eliminate the need for such shadow boxing. The Commission should take no action purporting to affect Globalstar's authority to provide services in other countries without providing notice and an opportunity to comment on the proposed action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William T. Lake".

William T. Lake
Counsel to Globalstar, Inc.

Attachment

cc: Aaron Goldberger
Bruce Gottlieb
Renee Crittendon
Angela Giancarlo
Wayne Leighton
Helen Domenici
Matthew Berry



Exhibit 1

FOR IMMEDIATE RELEASE

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**Globalstar, Iridium, Odyssey Global Mobile Satellite
Phone System Operators Sign Spectrum Agreement**

October 18, 1996 — The operators of "Big LEO" systems Globalstar™, IRIDIUM®, and Odyssey™ have agreed to cooperate in an effort to secure global authorizations for the portions of the radio frequency spectrum to be used by their mobile phones.

The three systems are the only U.S.-licensed Big LEOs.

"This agreement provides us with a unified, cooperative approach to our spectrum-use and segmentation as we seek frequency authorizations and operating licenses around the world," said William F. Adler, vice president and division counsel for Globalstar L.P., in announcing the pact.

Globalstar™ and Odyssey™, which employ CDMA, or code division multiple access, share a segment of spectrum for their mobile links. That spectrum segment can accommodate other global systems employing compatible technologies. IRIDIUM®, a TDMA, or time division multiple access, system uses a separate segment for its mobile links.

"Our agreement conforms with the International Telecommunication Union's frequency authorizations for global mobile systems. We think it provides a workable framework for countries around the world to adopt," added Francis Latapie, Iridium LLC executive director for government affairs.

The frequency-use plan to which the three companies agreed is premised upon the same spectrum-sharing and segmentation plan adopted by the U.S. Federal Communications Commission (FCC) in its "Big LEO Order" (as adopted in October 1994, and modified by the FCC in February 1996), which authorized the three systems to operate in the U.S. The band plan was adopted by the FCC after years of discussions, negotiations, and formal and informal FCC rule-making proceedings, according to John T. Feneley, director for international development and regulatory affairs for Odyssey Telecommunications International Inc.

- more -



The three companies reached the pact less than two weeks before the International Telecommunication Union's World Telecommunication Policy Forum, which opens in Geneva, Switzerland, on October 21. At the Forum, more than 100 countries will consider the regulatory issues raised by the introduction of global mobile personal communications by satellite.

Globalstar, Iridium, Odyssey, and other proposed mobile satellite system operators are seeking recognition at the conference for the benefits that mobile satellite services will offer to countries around the world. The companies are advocating a set of voluntary principles to guide countries in developing regulatory policies for mobile satellite systems.

"The fact that we have agreed to pursue a common spectrum sharing and segmentation plan for our mobile links should simplify the regulatory process in countries where we seek to operate," said Feneley.

Globalstar L.P., based in San Jose, Calif., is a partnership of 12 international telecommunications service providers and equipment manufacturers who are building a global mobile satellite telephone system that will be operational in 1998. Globalstar's dual-mode (cellular-satellite) handsets will be compatible with the world's existing cellular and wireline networks. Globalstar™ will sell access to the Globalstar™ system to a worldwide network of regional and local telecommunications service providers, including its strategic partners.

Iridium LLC is an international consortium of leading telecommunications and industrial companies funding the development of the IRIDIUM® system. The IRIDIUM® system is a 66-satellite telecommunications network designed to provide global wireless services to handheld telephones and pagers virtually anywhere in the world, starting in late 1998. The first satellite will be launched this year.

Odyssey Telecommunications International Inc. (OTI), which has TRW Inc. and Teleglobe Inc. as founding shareholders, is developing the patented Odyssey™ system to provide global, satellite-based personal communications services. A constellation of 12 Odyssey™ satellites in medium-Earth orbit, about 10,300 kilometers above the globe, will permit subscribers equipped with Odyssey dual-mode pocket telephones to call any phone on Earth, from anywhere on Earth. OTI will operate as a wholesale provider of personal communications services to national service operators, who in turn will provide Odyssey™ services to retail consumers.

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